

LIFE INSURANCE TRUSTS: A RECAPITULATION FOR THE DRAFTSMAN

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PART ONE

The development of Life Insurance Trusts during the past decade has brought into prominence with ever-increasing force complex problems arising from the combination of insurance law and trust law inherent in this subject.¹ Various legal problems have been discussed from time to time,² but contact for the past several years with a large number of lawyers engaged in active practice has been convincing proof of the necessity for a co-relation of the theoretical discussion of Life Insurance Trusts and the concrete problems of the legal draftsman. As Professor Hanna remarked at the conclusion of an earlier article in the *University of Pennsylvania Law Review*,³ it is practically impossible to write anything adequate on a contemporary subject such as Insurance Trusts if the discussion is limited purely to legal material.

The problem of the legal draftsman is fundamentally a problem of the reconciliation of legal requirements with a practical plan of operation by means of clear, concise phraseology which will give rise to no questions of construction, to the end that the desires of the interested parties may be made effective. It is to be observed that the subject of Insurance Trusts has been but seldom before any court. This, of course, is due to the recent development of the subject, which is a technical one. Questions have not been raised, more because of a lack of appreciation of the points involved by opposing counsel, than because of the skill of the draftsman. As a result of this condition, any discussion must be undertaken with a full realization of the dangers involved where there is no specific authority on which to rely. This fact, however, should not render improper a discussion of what is considered correct practice, for it may well be that if our conclusions are

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² HORTON, POWER OF AN INSURED TO CONTROL THE PROCEEDS OF HIS POLICIES (1926); STEPHENSON, LIVING TRUSTS (1926); HORTON, SOME LEGAL ASPECTS OF LIFE INSURANCE TRUSTS (1927); SCULLY, INSURANCE TRUSTS (1927); SIMON, BUSINESS INSURANCE (1930); SCULLY AND GANSE, BUSINESS LIFE INSURANCE TRUSTS (1930); Fraser, *Personal Life Insurance Trusts* (1930) 16 CORN. L. Q. 19; Voorhees, *Some Legal Problems Involved in Life Insurance Trusts* (1928) 4 PAPERS PRESENTED BEFORE THE ASSOCIATION OF LIFE INSURANCE COUNSEL; LOW, *Some Legal Aspects of Life Insurance Trusts* (1929) 4 *id.* 155; Wright, *Designation of a Trustee as Beneficiary* (1930) 4 *id.* 521; Yost, *Some Problems Relating to Life Insurance Trusts* (1930) 4 *id.* 567; Swansen, *The Effect of Merger on Corporate Trustee Beneficiaries or Assignees* (1931) 5 *id.* 241.

³ See Hanna, *Some Legal Aspects of Life Insurance Trusts* (1930) 78 U. OF PA. L. REV. 346.

sound, we may help to create a body of custom which will render an appeal to the courts largely unnecessary.

A life insurance policy is a complicated instrument and a body of law has been developed with regard to the rights of the various parties to the policy which is in many respects peculiar to itself and which occupies as distinct a position in the law of contracts as does the law on negotiable instruments. On the other hand, the law with regard to trusts has its own peculiarities. It is obvious that the attempt to adjust and harmonize the rights and duties of the various parties will call for an expert knowledge and a judicious application of the law relating to both types of instruments. Such combination of knowledge, however, is but infrequently found in one individual. The average lawyer should be, and usually is, well grounded in the fundamentals of trust law but generally he has had little experience with insurance law. Fortunately, in most cases the cooperation of the insurance underwriter is obtainable and the lawyer will find that the suggestions of the underwriter often will be very helpful.

It seems clear, however, that much of the confusion which exists in the mind of the lawyer with regard to the insurance trust agreement might be avoided if he kept clearly before him a few of the most fundamental principles of insurance law. No attempt will be made here to discuss the whole body of insurance law as this has been done adequately elsewhere,⁴ but it should be noted that the task of the lawyer would be much easier if he would bear constantly in mind that a policy of life insurance is a contract under which valuable rights have been created and funds made payable, on the happening of a certain event, to a designated beneficiary, not a party to the contract;⁵ that a right to change the beneficiary together with other rights may be reserved to the owner but that the exercise of that right must be in accordance with the terms of the insurance contract, is simply an exercise of a power of appointment and will not affect the ownership of the insurance policy; that rights created under the contract may be assigned by the owner in the same manner as other choses in action of similar nature without notice to the insurance company and that such assignment will affect the ownership of the policy.

The forms of instruments popularly referred to as "Insurance Trust Agreements" may be divided roughly into two groups. In the first group are agreements which do not create immediate trusts and in the second are those agreements which do create immediate trusts.⁶ These agreements may also

⁴ JOYCE, *THE LAW OF INSURANCE* (2d ed. 1917); VANCE, *HANDBOOK OF THE LAW OF INSURANCE* (2d ed. 1930); RICHARDS, *INSURANCE LAW* (3d ed. 1916); COOLEY, *BRIEFS ON INSURANCE* (2d ed. 1927).

⁵ 1 JOYCE, *op. cit. supra* note 4, at 73; VANCE, *ibid.* § 23; RICHARDS, *ibid.* § 24; 32 C. J. 975 *et seq.*; 37 C. J. 359 *et seq.*; 14 R. C. L. 839 *et seq.*

⁶ Fraser, *Personal Life Insurance Trust* (1930) 16 CORN. L. Q. 19.

be classified as "Unfunded" or "Funded" agreements depending upon the method of insurance premium payments. They may be further classified as "Personal" or "Business" agreements depending upon the function of the agreement.⁷ These various classifications are not mutually exclusive but are inclusive in various combinations. Thus one may have a Personal Funded Insurance Trust, an Unfunded Business Insurance Trust Agreement, or other suitable combinations. The first problem of the draftsman in each case is to determine which form of agreement is best adapted to the needs of his client; his second problem is to draft the agreement so that it will operate efficiently from both the legal and the practical viewpoint to accomplish the desired end. It is our purpose here to discuss some of the more common forms of insurance trust agreements from the point of view of the draftsman. The personal agreements will be considered first and then the business agreements.

I

THE PERSONAL UNFUNDED LIFE INSURANCE TRUST

When the Settlor Desires to Retain Full Control Over the Policies During His Life

The Personal Revocable Unfunded Insurance Trust Agreement under which policies on the life of the settlor are deposited with the trustee and under which the settlor reserves full control with regard to such policies is today the form of agreement most commonly used. The settlor in executing an agreement of this type intends to provide for payment to the trustee of only such proceeds as may ultimately become payable under the insurance policies at the time of the settlor's death. The settlor intends to reserve the power to exercise all rights under the policies and to pay all premiums himself; hence, no securities or other property are transferred to the trustee for the purpose of providing funds with which to make premium payments. It is possible to transfer property other than insurance policies to the trustee during the life of the settlor, the income from which is to be paid to the *cestui que trust*. This is not usually done, however, as in the great majority of cases if the settlor transfers property to the trustee, he desires the trustee to use at least part of the income to pay insurance premiums, in which case the funded form of agreement as later discussed herein is used. Hence in the case of the usual Personal Revocable Unfunded Agreement, as will be pointed out later in this subdivision, it is very doubtful whether a trust may be said to exist until the death of the settlor. Under such agreements, however, insurance policies are usually deposited with the trustee. It is preferable that they should be so deposited in order that the trustee may take immediate action with regard to collection of proceeds upon the death of the settlor.

⁷ See Hanna, *supra* note 3, at 346.

If the intention of the settlor set forth above is to be accurately reflected in the agreement, certain recitals and provisions included as a routine matter in the ordinary voluntary trust agreement are inapplicable, and certain additional provisions should be added relative to the exercise of various rights under the policies and the collection of the proceeds thereof. In the ordinary voluntary trust agreement a recital is commonly included to the effect that the settlor "has caused or will cause certain property listed in a schedule attached to this agreement to be transferred and assigned to the Trustee" and following such recital, a definite transfer and assignment of property listed in the schedule will be made. It is submitted that this language has no place in an Insurance Trust Agreement of this type.

In the first place, while it may be of minor importance, it should be noted that the words "has caused", whatever their function may be in the ordinary trust agreement, are unnecessary in this type of agreement. Insurance companies will not designate a certain party as the beneficiary under a policy unless that party is definitely ascertainable. A trustee under an agreement of certain date cannot be said to be definitely ascertainable until the agreement has been executed and hence insurance companies generally will refuse to endorse the desired change in designation of beneficiary upon a policy until after the agreement has been executed. The words "has caused" imply action on the part of the settlor which it is impossible for him to have performed, and hence these words are surplusage.

In the second place, the use of the words "will cause" may imply a covenant on the part of the settlor to make the contemplated change. This is correct if it is so desired but it is not usually the intention. In order that the settlor may deal freely with any policy at any time and for the purpose of avoiding the creation of a covenant which the trustee might feel obligated to enforce, it is generally thought advisable to avoid the use of these or similar words.

Lastly, and this is of the greatest importance, words of transfer and assignment relating to insurance policies should not be included in an agreement where the settlor desires to retain control of the policies. The insurance companies contend, and it would appear rightly so, that the words above quoted or similar words included in a trust agreement, even though insurance policies are but generally included within their scope, operate as an immediate assignment of the rights under the policies to the trustee. But there are important objections to the assignment of insurance policies to the trustee under this type of agreement. In the first place, the assignment operates to bring about a result which is not only contrary to the intention of the settlor but which may defeat his intention. Since the settlor desires full control over the policies, a further reservation of rights with respect thereto will probably be included in the agreement. The combination of

assignment with reservation of rights may be very troublesome because of the danger of inconsistency and the further question of whether a beneficiary's rights are destroyed by assignment of the policy. It should be observed that there is a considerable body of authority which holds that in the absence of a statute or a specific provision in the policy, where the owner of an insurance policy, which is payable to a beneficiary other than the owner's estate, assigns the policy without first obtaining the joinder of the named beneficiary, although right to change the beneficiary is reserved, the assignment does not operate to change the beneficiary and the assignee will not be entitled to the proceeds of the policies on the death of the insured without further action on the part of the assignee in obtaining a change of beneficiary.⁸

On the other hand there are a number of cases which hold that an assignment does operate to change the beneficiary and entitles the assignee to the proceeds.⁹ Examination of these latter cases, however, discloses that except for policies which prior to assignment were payable to the estate of the insured, the assignee in substantially all instances was a creditor of the insured. A valuable consideration was involved in these cases and it was not merely a question of the substitution of an appointee. As, in the case of most insurance trusts, the question is one of substitution and not consideration, it may be urged that these latter cases are poor authority for the theory that the rights of beneficiaries are destroyed by assignment to a trustee. In any event, in view of the foregoing decisions, it is clear that assignment to a trustee in cases where the beneficiary is other than the insured's estate is an open invitation for trouble.

Assuming that the law of the jurisdiction governing the policy contract holds that assignment does not destroy a beneficiary's rights, if, after execution of the agreement containing words of assignment, the policies are pre-

⁸ *Sullivan v. Maroney et al.*, 76 N. J. Eq. 104, 73 Atl. 842 (1909), *aff'd* 77 N. J. Eq. 565, 78 Atl. 150 (1910); *Anderson v. Broad St. Nat. Bank*, 90 N. J. Eq. 78, 105 Atl. 599 (1918); *Thomas v. Thomas*, 131 N. Y. 205, 30 N. E. 61 (1892); *Schoenholz v. New York L. I. Co. et al.*, 175 N. Y. Supp. 684 (1919) (but see s. c., 183 N. Y. Supp. 251 (1920) where judgment was reversed); *Farra v. Braman*, 171 Ind. 529, 86 N. E. 843 (1909); *Deal v. Deal*, 87 S. C. 395, 69 S. E. 886 (1911); *Indiana Nat. Life Ins. Co. v. McGinnis*, 180 Ind. 9, 101 N. E. 289 (1913); *Johnson v. New York L. I. Co.*, 56 Colo. 178, 138 Pac. 414 (1914); *L. R. A.* 1916 A. 868 and note; *Muller v. Penn Mutual Life*, 62 Colo. 245, 161 Pac. 148 (1916).

⁹ *Martin v. Stubbings*, 126 Ill. 387, 18 N. E. 657 (1888); *Atlantic Mutual Life Ins. Co. v. Gannon et al.*, 179 Mass. 291, 60 N. E. 933 (1901); *Mutual Life Ins. Co. v. Twyman*, 122 Ky. 513, 92 S. W. 335 (1906); *Crice v. Illinois Life Ins. Co.*, 122 Ky. 572, 92 S. W. 560 (1906); *McNeill v. Chinn*, 45 Tex. Civ. App. 551, 101 S. W. 465 (1907); *Missouri State Life Ins. Co. v. California State Bank*, 202 Mo. App. 347, 216 S. W. 785 (1919); *First Nat. Bank etc. v. Security Mut. Life Ins. Co.*, 283 Mo. 336, 222 S. W. 832 (1920); *Schade v. Western Union Life Ins. Co. et al.*, 125 Wash. 200, 215 Pac. 521 (1923); *Farmer's State Bank v. Kelly*, 155 Ga. 733, 118 S. E. 197 (1923); *Rattray v. Banks*, 31 Ga. App. 589, 121 S. E. 516 (1924); *Merchants' Bank et al. v. Garrard*, 158 Ga. 867, 124 S. E. 715 (1924); *Bonner v. Merchants' Bank of McRae*, 168 Ga. 782, 149 S. E. 133 (1929); *Baldwin et al. v. Wheat et al.*, 170 Ga. 449, 153 S. E. 194 (1930); *Antley v. New York Life Ins. Co.*, 139 S. C. 23, 137 S. E. 199 (1927); *Mutual Benefit Life Ins. Co. v. Swett*, 222 Fed. 200 (C. C. A. 6th, 1915); *Marlow v. Paganini*, 277 Fed. 790 (C. C. A. 9th, 1922).

sented to an insurance company for a change in designation of beneficiary for the purpose of naming the trustee as beneficiary, the insurance company will desire to examine a copy of the agreement.¹⁰ Upon such inspection, assignment of the policies will be revealed, and if the policy involved was payable to a beneficiary other than the estate of the owner, when the beneficiary did not join in the assignment, a dispute is almost certain to arise which will cause delay, and it is entirely possible that no change in designation will be made by the insurance company. If this last suggested difficulty should occur, the proceeds payable on the death of the insured would probably be paid into court by the insurance company for determination of the proper payee; direction would probably then be made by the court for payment to the beneficiary as designated on the policy and not to the trustee, thus completely defeating the intention of the settlor in this respect.

In the second place, the use of an assignment coupled with a reservation of a power of revocation and other powers in the agreement may make it possible for an interested party to contend that the agreement was a testamentary disposition and invalid as not having been executed in accordance with the requirements of the statute of wills in the particular jurisdiction. While the weight of authority appears to support the theory that reservation of various powers in a trust instrument creating a trust *inter vivos* does not necessarily make that instrument testamentary in nature,¹¹ the majority opinion has been questioned¹² and has not been universally followed.¹³

A case illustrative of the difficulties which may arise is *Mutual Benefit Life Insurance Company v. Clark*,¹⁴ decided in 1927. In this case the insured assigned an insurance policy to a party other than the named beneficiary. The assignment was revocable, the beneficiary did not join in the

¹⁰ It would seem clear that an insurance company is entirely justified in requesting to see a copy of the agreement. (See Yost, *supra* note 2, at 575-578.) A few companies will accept in lieu of a copy of the agreement excerpts from the agreement setting forth the provisions relative to the insurance policies accompanied by a statement that no words of assignment were used.

¹¹ *Stone v. Hackett et al.*, 78 Mass. 227 (1858); *Jones v. Old Colony Trust Co. et al.*, 251 Mass. 309, 146 N. E. 716 (1925); *Roche v. Buckley*, 254 Mass. 584, 150 N. E. 866 (1926); *Nichols v. Emery et al.*, 109 Cal. 323, 41 Pac. 1089 (1895); *Booth et al. v. Oakland Bank of Savings et al.*, 122 Cal. 19, 54 Pac. 370 (1896); *Kelley v. Parker et al.*, 181 Ill. 49, 54 N. E. 615 (1899); *Windolph v. Girard Trust Co. et al.*, 245 Pa. 349, 91 Atl. 634 (1914); *In re Dolan's Estate*, 279 Pa. 582, 124 Atl. 176 (1924); *Van Cott v. Prentice et al.*, 104 N. Y. 45, 10 N. E. 257 (1887); *Lewis v. Curnutt et al.*, 130 Iowa 423, 106 N. W. 914 (1906); *Wilcox et al. v. Hubbell et al.*, 197 Mich. 21, 163 N. W. 497 (1917); *Smith v. Corey et al.*, 125 Minn. 190, 145 N. W. 1067 (1914).

¹² *Union Trust Co. v. Hawkins*, 121 Ohio St. 159, 167 N. E. 389 (1929).

¹³ *Nutt v. Morse et al.*, 142 Mass. 1, 6 N. E. 763 (1899); *McAvoy v. Boston Five Cent Savings Bank et al.*, 201 Mass. 50, 87 N. E. 465 (1909); *Russell v. Webster et al.*, 213 Mass. 491, 100 N. E. 637 (1913); *Mathias v. Fowler*, 124 Md. 655, 93 Atl. 298 (1915); *Citizens Nat'l Bank v. McKenna et al.*, 168 Mo. App. 254, 153 S. W. 521 (1913); *Providence Institute v. Carpenter et al.*, 18 R. I. 287, 27 Atl. 337 (1893); *Gilham v. Mustin et al.*, 42 Ala. 365 (1868); *Ellis et al. v. Pearson et al.*, 104 Tenn. 591, 58 S. W. 318 (1900); *Carlton v. Cameron*, 54 Tex. 77 (1880); *Worthington's Adm'r v. Redkey et al.*, 86 Ohio St. 128, 99 N. E. 211 (1912); *Warsco v. Oshkosh Savings & Trust Co. et al.*, 183 Wis. 156, 196 N. W. 829 (1924).

¹⁴ 81 Cal. App. 546, 254 Pac. 306 (1927).

assignment, and no change of beneficiary was obtained. The court held that the named beneficiary, not the assignee, was entitled to the proceeds. The court, after enumerating the essentials of a complete and valid gift, concluded:

"Therefore, conceding, but not deciding, that the sending to the home office of both copies of the assignment was a sufficient delivery, nevertheless, measured by the foregoing indisputable standards, the conclusion seems irresistible that the attempted gift from William C. Clark to appellant Eva Powell fell short of completion. It was the intention of the insured, manifested by the assignment, that it was to be effective only in the event that appellant should survive the insured, and then only in the event the insured did not exercise the reserved right of revocation. The assignment was not absolute or irrevocable in any respect; it was, at most, an attempted testamentary disposition of the proceeds of a life insurance policy; and, not being executed with the formalities required by law, is of no binding force, and appellant can predicate no action thereon."¹⁵

It will be noted that the decision rests upon the ground that the gift was incomplete as the assignment was revocable; that since the assignment was revocable it was an attempted testamentary disposition, and that since the assignment was not executed in accordance with the formalities prescribed by law, it was invalid. The judgment of the court could have been supported upon the ground that no change of beneficiary had been obtained in accordance with the terms of the policy. However, assuming that the grounds upon which the court rested its decision were proper, it would appear logical to conclude that the assignment of a life insurance policy to a trustee under a deed of trust in which the insured has not only reserved the right to revoke the trust but also the right to control the insurance policies during his life might be considered analogous to the above case. The situation is complicated by the fact that the decisions of the California courts appear to support the majority view that reservation of various rights in the case of an ordinary trust *inter vivos* does not necessarily make the trust testamentary in nature.¹⁶

The difficulty illustrated above may be entirely avoided if policies are not assigned, change of beneficiary being obtained instead. In the case of assignment, the insured does convey his interest in the policy and hence, where rights are also reserved under the trust agreement, an opening is presented for the argument that the disposition is testamentary in nature. This is not so, however, in the case of a change of beneficiary. An insurance policy is a contract between the insured and the company, under which the insured usually reserves, among other rights, a right to designate a party

¹⁵ *Id.* at 552, 254 Pac. at 308.

¹⁶ See *supra* note 11.

other than the one named to receive the proceeds. In so changing the beneficiary from time to time the insured does not convey his interest in the policy but merely exercises a contract power of appointment.

The above difficulties indicate that the Personal Revocable Unfunded Insurance Trust Agreement will be on a much sounder basis if no attempt is made in the trust agreement to regulate or change the rights of the settlor with respect to the insurance policies. It seems clear, therefore, that in place of the clause above discussed and similar provisions, there should be inserted in the agreement a recital or a provision relative to the deposit of the policies with the trustee which will omit words of transfer and assignment so far as they relate to insurance policies. This clause may state that the trustee will receive all sums payable upon the settlor's death pursuant to the terms of any policy insuring the life of the settlor and (1) listed in a schedule annexed to the agreement,¹⁷ or (2) payable to the trustee or any successor of the trustee with or without further words of description, and not payable to a trustee under some other trust agreement executed by the settlor, and that the proceeds of such policy or policies are thereafter referred to as the "Trust Estate". If this procedure is adopted, the trustee will be in the same position as any other beneficiary under the policy and the settlor's rights with respect to the insurance will rest upon the policy contract, which is the primary source of these rights. Such procedure permits the settlor to have full control over the policies and any sums payable thereon during his life, avoids the difficulties discussed above and appears to be beyond attack on the ground that it is an attempted testamentary disposition.¹⁸ It has the further great

¹⁷ Reference is frequently made to a schedule of insurance policies attached to the agreement. The policies may be listed in a schedule attached to the agreement, but it should be noted that under an agreement drafted in the manner here suggested, the policies are not part of the trust *res* and hence the schedule may be omitted. It should be observed that if a schedule is attached to the agreement in the usual case, because of withdrawal, substitutions and authorized alterations of policies by the settlor, it may soon cease to have any significance unless it is constantly changed. In the case of a modern corporate fiduciary handling a large number of trusts, such correction of schedules is most impractical because of the constant fluctuation in policies deposited under a trust agreement. The large corporate fiduciary will usually find it more practical to set up a schedule of policies apart from the agreement in order that the same may be conveniently altered from time to time.

In some cases a schedule is included to provide a convenient means for the trustee to acknowledge receipt of the policies. It should be noted that in some instances all policies listed in the schedule for one reason or another may not be available at the time the agreement is to be executed. The trustee may issue a separate receipt for the policies and it would appear to be a more practical method of handling this situation. It would seem therefore that a schedule of policies may be omitted entirely so far as the agreement is concerned. In any event, although reference may be made to a schedule, an additional provision should be set forth as above suggested authorizing the trustee to receive proceeds of policies payable to it although such policies may not be listed in a schedule.

¹⁸ *Lauterbach v. N. Y. Investment Co.*, 62 Misc. 561, 117 N. Y. Supp. 152 (1909). In this case one Spier designated Lauterbach as beneficiary trustee on policies formerly payable to Mrs. Spier and filed the policies together with a direction for disposition of the proceeds "in case anything should happen to me" in the hands of a third party who delivered the policies and directions for disposition to Lauterbach after the death of Spier. Lauterbach received the proceeds and brought action for instructions from the court for disposition among a number of defendants. The court held that the proceeds should be

advantage of simplifying the administrative details arising during the lifetime of the settlor.

Under an agreement drafted in the manner above suggested, the trustee will have in its possession during the settlor's life no property other than insurance policies; moreover, the trustee will have no legal or equitable title to such policies. The theory usually advanced in explanation of this situation is that, since the trustee receives no title to the policies or other property upon execution of the agreement, no trust is created at that time and no trust arises until the receipt of the insurance proceeds following the death of the settlor. Under this theory it may be argued that during the life of the settlor the so-called trust agreement operates in a dual capacity: as an escrow agreement with regard to the insurance policies deposited, and as a contract for a trust to arise in the future with regard to the proceeds of all policies payable to the trustee on or after the settlor's death. This theory is favored by the insurance companies as it clearly indicates that the rights under the policies remain as originally set forth therein and that the insurance company issuing the policy need not be concerned with the provisions of the trust agreement. However, it is argued at times that, irrespective of the above reasoning, a trust is created immediately upon the execution of the agreement. Under this view it is claimed that the right to receive the proceeds of insurance policies is a valuable right, legal title to which vests in the trustee upon endorsement of the change of beneficiary upon the policy and that this valuable right constitutes the trust *res* until the proceeds are received. It is further argued that the fact that the settlor reserves a general right of revocation, a right to change the beneficiary, and a right to exercise other powers does not alter the situation. In such case it is said that the interest is vested subject to divestment. In the case of the ordinary voluntary trust such contention might have considerable weight because of the body of authority holding that reservation of rights does not make an agreement testamentary in character, on the ground that the beneficiary's interest was vested although it was subject to divestment.¹⁹ But here we are not concerned solely with the nature of the interest received under the trust agreement, but also with the nature of the interest which a beneficiary of an insurance policy receives when a right to change the beneficiary is reserved. On this point the weight of authority appears to be to the effect that where a right to change the beneficiary has been reserved under the policy the beneficiary named in the policy

disposed of in accordance with the written instructions of Spier saying at page 565, 117 N. Y. Supp. at 155, "The subject of the asserted trust was peculiarly one which became effective only upon the death of the creator of the trust, and hence the reference in the letter to Lauterbach as to the disposition to be made by him of the proceeds of insurance 'in case anything should happen to me' should not be treated as an attempted testamentary disposition of property, but as a declaration of the purposes of the trust created in the policies of insurance." *Aff'd*, *Menrath v. Gifford*, 137 App. Div. 919, 122 N. Y. Supp. 1137 (1910).

¹⁹ See *supra* note 11.

has only an expectancy and not a vested right or interest during the life of the insured.²⁰ It is a fundamental rule of the law of trusts that there can be no trust of a *spes*; there must be a *res*. As under the above view the most that the trustee can have is an expectancy of receiving funds in the future and not a vested interest, it would seem that the second argument fails. However, irrespective of the theory adopted, it should be noted that the insurance policies are not considered to be part of the trust *res*.

A life insurance trust has been defined as "a trust whose *res* consists, in whole or in part, of a life insurance policy".²¹ The above arrangement would not fall within the terms of this definition, and rightly so, as under the majority view no trust appears to have been presently created. Nevertheless, the term "Unfunded Life Insurance Trust" is generally used not only by laymen and insurance underwriters but also by lawyers in describing this arrangement as well as in connection with agreements where policies are assigned to the trustee and a trust presently created. It is only in deference to this custom that further words of qualification were omitted in the heading for this division of this article. It might clarify the situation for the lawyer if the distinction above discussed were clearly recognized. Such agreements might be designated as "Unfunded Life Insurance Trust Contracts", being defined as a contract for a trust to arise in the future with respect to proceeds of insurance policies payable on or after the death of the settlor. In any event a recognition of the difference in the nature of the agreements should assist the lawyer in preparing an agreement which will accurately reflect the desire of the settlor.

In preparing a plan and drafting the specific provisions in the trust agreement the lawyer must of course consider the rule against perpetuities and the rule against restraints on alienation of the jurisdiction involved.²² In a jurisdiction following the common law rule, there is no question of importance peculiar to this type of agreement as the measuring lives in being are not restricted in number provided they are in existence upon the creation of the interest involved, but in a jurisdiction such as New York,²³ the trust term must be limited to end within the permitted period from the date of the

²⁰ VANCE, *op. cit. supra* note 4 at 561 and authorities cited; JOYCE, *op. cit. supra* note 5, § 741 and authorities cited; BACON, LIFE & ACCIDENT INS. (4th ed. 1917) § 379; 7 COOLEY, BRIEFS ON INSURANCE (2d ed. 1927) 6406; 37 C. J. 579 and notes; 14 R. C. L. 1388 and notes.

²¹ See Hanna, *supra* note 3, at 346.

²² For discussion of rule against perpetuities, etc., see: GRAY, RULE AGAINST PERPETUITIES (3d ed. 1915); CHAPIN, SUSPENSION OF THE POWER OF ALIENATION (3d ed. 1928); KALES, FUTURE INTERESTS (2d ed. 1928). For the law in each state see: LORING, A TRUSTEE'S HANDBOOK (4th ed. 1928); Hanna, *supra* note 3, digest at 387.

²³ The present rule in New York with regard to both real and personal property is to the effect that the trust must terminate within the period of two lives in being at the date of the instrument containing the limitation plus the period of a possible minority and nine months. N. Y. PERS. PROP. LAW § 11 as amend., N. Y. Laws (1929), c. 229, § 18, effective Sept. 1, 1930; N. Y. REAL PROP. LAW § 42 as amend., N. Y. Laws (1929), c. 229, § 16, effective Sept. 1, 1930; N. Y. PERS. PROP. LAW § 15; N. Y. REAL PROP. LAW § 103.

trust agreement even though the interests of all the parties have finally vested.²⁴ In such a jurisdiction the question of whether the settlor's life shall be used as one of the limiting lives is most important. If the theory above discussed to the effect that no trust is created presently is correct, there is no necessity to consider the settlor's life as one of the limiting lives; if however a trust is created, this question must be considered.²⁵ The difficulty, however, can be avoided if the draftsman will give consideration to this problem at the time the agreement is being prepared.

While it is important that the introductory paragraphs of the Unfunded Insurance Trust Agreement be properly drafted to give full effect to the intention of the settlor, it is equally important to include a proper reservation of rights to the settlor. The rights to be reserved may be divided into two groups, the first group consisting of rights with respect to the trust agreement and the second group consisting of rights with respect to insurance policies.

The first group of rights to be reserved includes the right to revoke the trust agreement in whole or in part and the right to change the terms of the agreement or to change the beneficiaries named under the agreement, by written notice to the trustee. Because insurance policies are involved, it is advisable, although it is not necessary, to specifically state that said rights may be exercised by the settlor without the consent of any person and without notice to any person other than the trustee. It would be possible to execute an irrevocable agreement of this type but because of the reservation of the second group of rights mentioned above, the settlor would in effect be able to prevent the trust from becoming effective. He could not, however, change the terms or beneficiaries under the agreement. In a special situation such an arrangement might be justified, but generally the omission of a reservation of the first group of rights will only tend to hamper the settlor in carrying out his intentions during his life. Usually, therefore, it is advisable to include a provision making a full reservation with respect to this first group of rights.

The second group of rights include those rights held by the settlor by virtue of the contract made with the insurance company evidenced by the insurance policy or policies. As the settlor desires to have full control over the policies during his life, these rights should be specifically reserved. A general reservation of the right to exercise all options, to receive benefits and to exercise all privileges to which the settlor is entitled under the policies

²⁴ *Coster v. Lorillard*, 14 Wend. 265 (N. Y. 1835).

²⁵ It should be noted that in New York it has been held that the settlor's life although used as a limiting life is not to be considered as one of the limiting lives for the purposes of § 42 of the Real Property Law and § 11 of the Personal Property Law. *Equitable Trust Co. v. Pratt*, 117 Misc. 708, 193 N. Y. Supp. 152 (1922); *aff'd*, 206 App. Div. 689, 199 N. Y. Supp. 921 (1923). Some question has been raised as to the soundness of this decision by practicing lawyers. It is thought advisable not to place too much reliance upon it.

would appear to be legally sufficient. As a practical matter, however, it is most advisable to set forth in detail the various rights reserved and to provide that such rights may be exercised without the consent or joinder of any person. Insurance policies vary in their terms. In some instances policies may be issued which require that a beneficiary even though revocably designated shall join with the insured (the settlor) in the exercise of various rights. The general wording above indicated would not be sufficient to establish the right of the insured (the settlor) to exercise such rights without joinder of the beneficiary, as he does not have such right under the terms of the policies in question. Since the trustee becomes beneficiary under the policies and is a party to the trust agreement, if a detailed and specific reservation of rights is made as above suggested, the settlor will be in a position to exercise the rights without restriction. In practice it has been found that a provision acceptable to insurance companies will state that the settlor reserves the right without the consent of any person and without notice to any person other than the trustee and without notice to the trustee as to policies not lodged with it, to cause any or all such policies to be made payable to some other person or corporation, to receive and receipt for any distributive shares of surplus or dividends accruing on any policy deposited with the trustee, to obtain and receive the surrender values of any of the policies, to assign the policies, to borrow upon the policies, and to exercise any and all other rights, options, benefits and privileges under such policies.

The settlor undoubtedly may withdraw a policy from the possession of the trustee for the purpose of exercising any of the rights discussed in the preceding paragraph without reservation of a specific right to withdraw being set forth in the agreement. It would seem, however, that a careful trustee would be unable to allow withdrawal of policies in the absence of a specific provision without determining the purpose for which the policy was withdrawn and further seeing that such purpose was accomplished. Much delay and formality may be avoided, therefore, by further specifically providing that the settlor may withdraw upon demand any or all policies on deposit with the trustee. It will be noted that a withdrawal of a policy under the terms of this provision will not, without further action on the part of the settlor, revoke the trust as to the proceeds of the policy so withdrawn.

It also seems advisable to cover specifically the matter of premium payments to avoid any possibility of dispute arising upon this question. This provision may state that the trustee shall not be under any obligation to pay any premiums on any policy deposited and that the settlor may at any time cease to pay the premiums thereon.

If the introductory provisions of the agreement have been drafted as first suggested it will be inferred that the settlor has the right to deposit additional policies with the trustee. It would seem advisable, however, to

include, among other rights reserved, a specific provision to this effect. It has been assumed in the above discussion that the policies to be deposited will be policies owned by the settlor insuring his own life. It is possible to provide for the deposit by the settlor of policies owned by him insuring the life of a third party. It should be observed that in such cases the trustee may receive funds to administer in accordance with the terms of the agreement prior to the death of the settlor. On the other hand, the third party may survive the settlor. In this last situation, as the settlor was owner of the policies on the life of the third party, difficulties may arise if no provision is made in the agreement covering this contingency. Usually it seems best to provide that upon the settlor's death, the trustee shall deliver such policies to the settlor's executor or administrator. They will then be considered as assets of the settlor's estate. It is obvious that the deposit of this type of policy complicates the situation somewhat and should be avoided whenever it is convenient to do so.

It should be observed that it is possible to draft an agreement which would permit the deposit by a third party of policies on his own life or on the life of another which are owned by him. However, such an agreement would be very cumbersome and would be difficult for a trustee to administer. In view of the fact that the third party may establish a separate trust agreement it would seem much better to avoid the creation of a complicated situation by omitting any provision permitting deposit of policies by third parties.

The trustee's duties and obligations with respect to the collection of all the proceeds of insurance policies should be specifically defined. It would seem advisable to avoid the use of a provision which in effect states that the trustee "shall collect the proceeds of policies deposited with it upon their maturity". In the first place, the words "shall collect" impose a duty upon the trustee which it may be unable to perform or which it may be inadvisable to perform as a practical matter with respect to a particular policy. In the second place the words "upon their maturity" should be clarified by the addition of words indicating that the maturity referred to is maturity upon the death of the settlor; otherwise the trustee may be called upon to receive funds payable prior to the death of the insured. It would seem that this question might better be covered by a clause stating that the trustee shall receive such sum or sums as may be paid to it by the insurance company or companies issuing such policy or policies by reason of the death of the settlor and shall be under the further duty upon being advised of the settlor's death to make efforts to collect such sums as may appear to be due including the duty to bring suit therefor if that be necessary and in the opinion of counsel advisable. The careful trustee would request the addition of a proviso to the effect that such trustee should be under no duty to bring suit unless payment

of its expenses have been guaranteed in a manner reasonably satisfactory to the trustee with the further provision that the trustee might reimburse itself from trust funds for expenses incurred in collecting or attempting to collect any such sum from an insurance company by suit or otherwise.

There is one further point which should be discussed in connection with the retention of full control by the settlor. Under the majority fiduciary practice where a corporate trustee is named as trustee, the settlor will often desire to name his wife, his lawyer, or other close friend or relative as a co-trustee. In the ordinary trust such appointment may be much to be desired, but in the type of agreement under discussion, an immediate appointment of an individual co-trustee may greatly hinder administration during the settlor's life. The signature of the co-trustee may be required in connection with changes of beneficiary on the policies or the acceptance of such co-trustee may be necessary with respect to amendments, or revocation of the trust instrument. In cases where the co-trustee is other than the settlor's lawyer, restraints may be placed upon the settlor's freedom of action in dealing with the trust instrument and the policies deposited thereunder to the extent that the relationship may be most inconvenient. The existence of the co-trustee may, in fact, not only be inconvenient but become very embarrassing to the settlor during his life due to a change in relationship between himself and the co-trustee. It is to be observed that usually the settlor's intention is that the co-trustee shall in reality exercise no control during the life of the settlor and shall become active only upon the death of the settlor. It is submitted that if such is the case, it is much better procedure to omit the immediate appointment of the individual co-trustee and in place thereof to include at the end of the agreement a separate article authorizing qualification of the individual co-trustee following the settlor's death by the designated party filing with the acting trustee an instrument in writing accepting appointment thereunder.²⁶ If this procedure is adopted, a person so authorized to qualify as an individual co-trustee need not be a party to the original agreement, his signature and consent will not be required during the life of the settlor for any purpose, and the settlor will, therefore,

²⁶ The following is suggested as one form for such an article: "The Settlor appoints _____, Co-Trustee hereunder with _____ Bank, Trustee, upon the death of the Settlor, shall qualify as Co-Trustee hereunder at any time after the death of the Settlor by filing with said Bank as Trustee hereunder an instrument in writing duly signed and acknowledged by him (or her) stating that he (or she) accepts the trusts created hereby and agrees to act as Co-Trustee hereunder with the said Bank (without compensation). After the filing of such instrument, the said _____ shall have jointly with the said Bank, the same rights, powers and duties as said Co-Trustee as the rights and powers conferred and the duties imposed upon the said Bank by the provisions of the foregoing articles numbered "1" to " " inclusive of this instrument (except the right to compensation as such Co-Trustee and except the right to actual custody of personal property held hereunder). No bond or other security shall be required of the said _____ as such Co-Trustee. If said _____ shall die, resign, fail to qualify or be removed as such Co-Trustee no successor or substitute Trustee shall be appointed in his (or her) place and stead."

be free to act without restraint or inconvenient delay. Upon the settlor's death the co-trustee may immediately qualify and begin to act in that capacity.

After an agreement of the type here discussed has been executed there remains one further act to be done. A proper change in designation of the beneficiary upon the insurance policies must be obtained. Up to the present time the practice of life insurance companies in this matter has not been uniform. A point upon which a considerable difference of opinion exists is whether the name of the settlor and date of the trust agreement should be included in the designation of the beneficiary on the insurance policies. The majority of the insurance companies, among which are included many of the well-known institutions, hold that the beneficiary should be described as "Trustee under agreement made by John Doe dated the day of , 193 ". The companies supporting this view contend that since the insurance company must make payment to the proper payee, its chief concern is that payments under the policy shall be directed to be made to a clearly designated beneficiary and that the receipt of such beneficiary shall operate as a full discharge and acquittance to the insurance company. They further argue that the inclusion of the word "Trustee" in the designation is an open declaration that the corporation so named is acting in a particular fiduciary capacity, that the insurance company is thereby placed upon notice of the existence of a trust, and that the payee is a particular trustee whose identity must be established. These companies then contend that the trustee may best be identified by specifically naming the settlor and the date of the agreement in the designation.

It is further argued in support of this view that, unless the specific form of designation is used, serious questions of title may arise when the policy becomes a claim.²⁷ This view holds that the original designation of a party as beneficiary trustee requires that payments shall be made to a particular trustee whether the date is specified or not. When the agreement is revoked, the trustee under that agreement ceases to function as such trustee, and, while the person or corporation formerly named trustee may become a trustee under a new agreement, such person or corporation will be acting in an entirely different capacity. This being so, it would appear advisable in all such cases to obtain a change of beneficiary on the policies upon revocation of the old agreement and execution of the new agreement although the beneficiary trustee is so designated without further words of description.²⁸ On the

²⁷ *Kendrick v. Ray*, 173 Mass. 305, 53 N. E. 823 (1899); *Devries' Estate v. Hawkins*, 70 Neb. 656, 97 N. W. 792 (1903); *Kerr v. Crane et al.*, 212 Mass. 224, 98 N. E. 783 (1912); *Lashley et al. v. Lashley et al.*, 212 Ala. 255, 102 So. 229 (1924).

²⁸ This view of the matter is supported by the Association of Life Insurance Counsel in a report made at their meeting in December, 1930. Attention was called to the fact that insurance trust agreements are frequently revoked and new agreements executed and that it was the opinion of counsel that it was essential that proper changes of beneficiary should be executed making the policies payable to the trustee under the new agreement. An

other hand, there is a minority opinion which holds that the inclusion of the date of the trust agreement imposes upon the insurance company the obligation of obtaining evidence that the trust agreement was still in effect as of the date of the insured's death and that such supplementary designation serves to complicate rather than simplify the entire transaction. In some cases parties supporting this view appear to be under a misapprehension with respect to the obligations of a party who has notice of the existence of a trust in dealing with the trustee thereunder.²⁹ It is submitted that although the date is not included in the designation, if the word "Trustee" is included the insurance company is placed upon notice, not only of the existence of the trust agreement, but that payments must be made to a certain trustee. Hence, the inclusion of the date of the agreement will aid rather than hinder the insurance company in making the payment. The view of the minority was supported by Mr. C. P. Peterson, general counsel of the Bankers Life Insurance Co. of Nebraska in an address at the American Life Convention at Pittsburgh on October 5, 1931.³⁰ Mr. Peterson, after outlining the procedure which would be followed under the majority view, admitted that if such procedure were followed, the transaction would be closed in splendid fashion, but he then discussed a hypothetical case wherein three policies are made payable in accordance with the majority view, such change in beneficiary not being recorded at the head office of the company issuing the policy. He then stated that if the company was then called upon to make payment, such payment would be deferred until a judicial determination had been obtained, not because of any doubt as to the intent of the insured but because the records of the insurance company would not conform. He then declared that two things would inevitably follow from the recommended procedure. In the first place the insurance company would be called upon to record changes every time any change was made in the trust agreement, although the company might not have any interest in the change, and, in the second place, he said a trap would be set for those persons not fully acquainted with the detail of the procedure adopted. Mr. Peterson then argued that

example was given to the effect that if policies have been made payable to the "Blank Trust Company, Trustee under trust agreement dated January 1, 1928" and this agreement is revoked on November 1, 1930, and a new agreement executed as of that date naming the Blank Trust Company, Trustee, proper changes of beneficiary should be obtained making the policies payable to the "Blank Trust Company, Trustee under trust agreement dated November 1, 1930." Counsel called attention to the fact that the two trusts are separate and distinct regardless of the fact that the same company is trustee under both agreements.

²⁹ The majority of the courts take the view that the use of a descriptive term after the signature of a trustee is sufficient to give notice of the trust relation to a person dealing with such trustee and to make it incumbent upon such person to ascertain the character and limitations of the Trustee's powers. See *Geyser-Marion Gold-Mining Co. v. Stark*, 106 Fed. 558 (C. C. A. 8th, 1901); *Mercantile Nat. Bank v. Parsons et al.*, 54 Minn. 56, 55 N. W. 825 (1893); *Snyder v. Collier et al.*, 85 Neb. 552, 123 N. W. 1023 (1909). See also 26 R. C. L. 1297.

³⁰ See PRENTICE HALL TRUST SERVICE, §§ 7205-7215.

such procedure instead of reducing the instances in which the intention of the insured is defeated would be more apt to greatly increase them.

Mr. Peterson appears to feel that the majority view rests upon a technical distinction which might, as a practical matter, be disregarded without danger. It is submitted that while the question is indeed a technical one, nevertheless, if the technicality is disregarded, much trouble may ensue. The modern corporate fiduciary acts in the capacity of trustee in hundreds and in some instances thousands of cases. Further, such fiduciary may have several trusts established by the same settlor with the same beneficiaries but with the agreements bearing different dates. It would seem to be a practical necessity for the insurance company to include the date of the agreement in the designation of beneficiary endorsed upon the policies in order that it may make payment to that particular trustee. In making remittances in such case, the insurance company may make its check payable to the trustee under agreement of certain date and the trustee will receipt for the proceeds in the same manner. If such procedure is followed, it would seem that the insurance company is completely relieved of responsibility in the matter. Further, the insertion of the date in the designation offers some protection to the trustee and is of help to it in making a proper allocation of the funds. After full consideration, therefore, it is submitted that the majority opinion calling for a full description in the designation of the beneficiary should be followed.

II

THE PERSONAL UNFUNDED LIFE INSURANCE TRUST

When the Settlor Does Not Desire to Retain Full Control Over the Policies During His Life

When the settlor does not desire to retain full control over the insurance policies during his life and does not desire to fund the trust, an unfunded agreement may be executed under the provisions of which policies will be assigned to the trustee, but it will be specifically provided that the trustee is not to pay the insurance premiums. It is clear in this case that a trust is created upon execution of the agreement as legal title to the policies passes to the trustee. It is, of course, possible for the settlor to reserve a right of revocation and a right to direct the trustee in the exercise of various rights under the policies, but, as has been pointed out in the preceding paragraphs, it would usually be much better if this form of agreement was not used in such cases as, in that event, the settlor desires in substance to retain control over the policies. A trust of this type may be made irrevocable, however, and there are times when such procedure may be proper. In the case of marriage, separation, or divorce settlements, the Irrevocable Unfunded Insurance Trust is useful in a situation where the husband does not

have sufficient estate to allow for an immediate settlement but does have income sufficient to provide for support and to pay insurance premiums.

This type of agreement may be drafted in the form of an ordinary trust *inter vivos* using words of assignment. The only special provisions required will be with regard to payment of insurance premiums and collection of proceeds. As to payment of premiums, a provision should be included to the effect that the trustee shall not pay such premiums; the settlor may or may not covenant to pay premiums, but if he does so covenant, the trustee will be obliged to attempt to enforce the covenant in event of default which the trustee should not be obliged to do unless adequately compensated for such action and unless counsel fees and other expenses incident to such action are adequately guaranteed. If the trustee does not wish to assume this obligation, another party, who may be the wife, may be named as co-trustee, and it may be provided that such co-trustee shall be the only trustee entitled to enforce such covenant; or it may be provided that the trustee shall not be under any obligation to enforce such covenant unless such trustee shall in its sole discretion deem it advisable to do so. As to collection of proceeds, a provision similar to the provision included in the Unfunded Insurance Trust Contract previously discussed³¹ should be included, with a proper adjustment in wording to cover the contingency that the trustee may be entitled to receive dividends or other payments prior to the settlor's death.

The agreement having been properly drafted, if words of assignment are included in the agreement, there are several matters which should be considered by the lawyer handling the case before the agreement is executed. As has been pointed out in the previous discussion, words of assignment included in the trust agreement will operate as an assignment of the insurance policies. It has also been pointed out that the weight of authority appears to hold that where the owner of an insurance policy which is payable to a beneficiary other than the owner's estate assigns the policy without first obtaining the joinder of the named beneficiary, the assignment does not operate to change the beneficiary, and, further, the assignee may not thereafter change the beneficiary without the beneficiary's consent.³² It is obvious, therefore, that in a case where the settlor holds policies which are payable to a beneficiary other than his estate and which are to be a part of the trust *res*, the execution of the agreement without proper attention being paid to the insurance policies may be disastrous. It would seem that the best procedure in most cases of this type would be to have the settlor prior to execution of the agreement obtain a change in the designation of beneficiary on the policies naming his estate as beneficiary. Such change having been made, all rights may be said to reside in the settlor and the agreement may be then executed and full title in the policies will pass by assignment to the trustee.

³¹ See text page 296.

³² See *supra* note 8.

Further, a question may be raised as to the necessity of the assignee (the trustee in this case) having an insurable interest in order to collect insurance proceeds. In the absence of a statutory provision, the weight of authority on this point holds that an assignment, at least when made by the owner in good faith and without any intention of using the assignment as a cover for a wager or gambling transaction, is not against public policy and is valid although the assignee has no insurable interest, particularly where one or more premiums have been paid by the owner before assignment.³³ Even in a jurisdiction which requires that the assignee shall have an insurable interest, it would seem that if the beneficiary of the trust would be considered as having an insurable interest (as would usually be the case in this type of agreement) then, on general equitable principles, the trustee as assignee would be entitled to collect the proceeds.

After the agreement has been executed and the assignment of the insurance policies properly completed, the trustee should give consideration to the question of notice to the insurance companies issuing the policies. It frequently appears, particularly in the case of insurance trusts, that the trustee assumes that its primary obligation is to the settlor. This, of course, is erroneous. Immediately upon the appointment of the trustee, such trustee's duty is to protect the interest of the beneficiaries under the trust as against the interest of all other parties.³⁴ It seems clear, therefore, that immediately upon assignment of the policies to the trustee, whether such assignment is made by means of a trust instrument or by other means, the trustee should take steps at once to gain possession of the policies and to place the insurance companies involved upon notice of such assignment, preferably of the exact wording of the assignment, in order to prevent innocent third parties from acquiring rights or equities in the policies as against the trustee. The necessity of such action on the part of the trustee is illustrated by a situation which arose several years ago. A corporate fiduciary was asked by an insurance company to produce a copy of a trust agreement which, on inspection, appeared to be irrevocable and constituted an absolute assignment of all rights of the insured in the policy in question, under which the insured had also reserved the right to change the beneficiary. The insurance company sent a proper form of notice for change of beneficiary and called attention to the fact that the trust agreement was irrevocable, that an absolute assignment had been made, and that, as a result, the insured had parted with all right to deal with the insurance policies. Thereafter the insured either surrendered the policies on his life issued by the other companies or he secured the full loan value of such policies. The insured was able to do this as the corporate

³³ For exhaustive discussion of this point and digest of cases see Note (1931) 73 A. L. R. 1036.

³⁴ See LEWIN, *TRUSTS AND TRUSTEES* (13th ed. 1928) 262; PERRY, *TRUSTS AND TRUSTEES* (7th ed. 1929) § 438.

fiduciary had not filed notice with the other insurance companies to the effect that the trust agreement was irrevocable and that under the terms thereof the policies were assigned to the trustee. It would appear that such failure on the part of the trustee to give notice constituted negligence on its part and if it should appear that the beneficiaries were prejudiced by such non-action on the part of the corporate fiduciary, it would be liable to the beneficiaries to the extent that their rights may have been prejudiced.³⁵

III

THE PERSONAL FUNDED LIFE INSURANCE TRUST

When the Settlor Desires to Retain Full Control Over the Policies During His Life

Under this form of agreement the settlor transfers property to the trustee, the income and/or principal of which will be used to pay premiums on insurance policies. In so far as the trust relates to this property, the agreement may be drafted in the form of an ordinary voluntary trust agreement with the addition of a provision specifically directing the trustee to pay premiums. It should be noted, however, that the settlor desires to retain full control over the policies and it is necessary therefore to combine the form of agreement discussed under the first sub-division herein with the provisions of the usual voluntary trust agreement. The provisions of both forms of agreement should be included. The property is transferred to the trustee, hence a trust is immediately created, but title to the insurance policies does not pass to the trustee; the trust relates only to the proceeds thereof, as in the case of the unfunded agreement where the settlor retains control over the policies. The problems involved under that form of agreement will also arise in this case, and it is necessary to use equal care to avoid words of assignment in so far as they may relate to the policies, to reserve full right of revocation as to the agreement, and to reserve the right to exercise the various rights under the policies as previously discussed. The provision with respect to the collection of the proceeds by the trustee should also be included. It is necessary, however, to alter the provision with regard to the payment of premiums, as in this case the premiums are to be paid by the trustee.

With regard to the provision for premium payments, in jurisdictions having no statutory restrictions with respect to accumulations, it may be provided that the trustee shall pay premiums from income, or, if income is insufficient, from principal or from other funds made available to it for that purpose. In jurisdictions having statutes limiting accumulations, however, such a provision may be invalid.³⁶ This question was considered of such

³⁵ Yost, *supra* note 2.

³⁶ See Hanna, *supra* note 3, 360-373.

importance in New York that the statute on accumulations was amended in 1927³⁷ to provide that an instrument which creates a trust in property consisting of or including life, health, accident or disability insurance policies and which directs that income of such trust shall be applied in whole or in part to payment of premiums on such policies shall not be considered as an accumulation either of the income so used for payment of premiums or of dividends on such policies when the policies are part of the trust *res*. It is to be observed, however, that in this type of agreement the insurance policies are not part of the trust *res*; hence, even in New York, it would be inadvisable in this type of agreement to direct that the trustee shall apply income in payment of insurance premiums. The better procedure appears to be to direct payment of such income to the settlor and then in a separate instrument in the form of a power of attorney, the settlor may authorize the trustee, until notice of revocation of the power is served upon it, to apply income as it is received from time to time to the payment of premiums on insurance policies deposited. Excess income may be paid over or added to the principal as directed. If this method is used, the provision in the agreement relative to premiums should be changed in such manner as to direct the trustee to pay premiums either from other funds made available to it for that purpose by the settlor or from the principal of the trust estate. The covenant of the trustee to pay premiums should of course be strictly limited so that it will be binding upon the trustee only in the event that the trustee has such funds available for payment. The covenant of the trustee usually should be further restricted by providing that it shall not be required to make such payments unless it shall have sufficient funds for that purpose in its possession ten days (or other convenient period) prior to the expiration of the period of grace on the particular premium then payable. It would seem advisable also to provide that the settlor shall not by depositing any such policy with the trustee be held to assume any obligation to pay any premium himself or to furnish funds for the payment thereof. It is not unusual for the settlor to obtain loans on his policies and usually in such case, where an agreement of this type is in operation, he will wish the trustee to pay the interest thereon as well as the premiums. It is often advisable, therefore, to include a direction for payment of such interest in the power of attorney and in the article dealing with premium payments included in the agreement.

There is one further difficulty to be considered here, however. In jurisdictions following the common law rule against perpetuities, the plan as above outlined will operate smoothly, but in jurisdictions with a more restricted rule, such as New York, the inclusion of the settlor's life as one of the lives upon which the duration of the trust is limited is unduly restrictive. Usually

³⁷ N. Y. PERS. PROP. LAW § 16, as amend., N. Y. Laws 1927, c. 681.

the settlor will desire to have the trust estate held in trust following his death for the benefit of his wife and after her death in equal shares for his children. In such case, if the settlor's life is included, in jurisdictions where it is possible to hold the trust for only two lives, plus a possible minority, a share of the trust cannot be held for a child after such child attains majority. This difficulty may be avoided in such jurisdictions by directing that the property held in trust during the life of the settlor shall be designated as Trust Estate *A* and the proceeds of the policies when received following the settlor's death as Trust Estate *B*. Trust Estate *A* under this plan is limited upon the life of the settlor's wife with the provision that if she shall predecease the settlor, Trust Estate *A* shall cease and determine and be paid over to the settlor. If the wife predeceases the settlor, the agreement will function automatically as an unfunded agreement until such time as the settlor may see fit to re-establish Trust Estate *A*. If the wife survives the settlor, Trust Estate *A* continues until ultimate distribution, usually in the same manner as Trust Estate *B*, which comes into existence upon the death of the settlor. Of course, when this plan is used it is necessary to specify, in the power of attorney and in the article with regard to premium payments included in the agreement, Trust Estate *A* as the trust estate, the income and principal of which is to be used for premium payments.³⁸

³⁸ The following are examples of the provisions relative to premium payments above discussed where the Trust *A* and *B* plan is used:

Provision to be included as part of the agreement:

"The Settlor may deliver to the Trustee any policy or policies of life insurance insuring his life made payable to the Trustee as beneficiary and may at any time withdraw any or all of such policies. While any such policy is lodged with the Trustee, the Trustee shall pay the premiums and/or loan interest thereon, either from other funds made available to it for that purpose by the Settlor, or from the principal of Trust Estate *A*, and to the extent that the Settlor fails to make available to the Trustee funds other than the principal of Trust Estate *A* with which to pay the premiums and/or loan interest on any such policy which is in the possession of the Trustee, but to that extent only the Trustee is authorized and directed to pay the premiums and/or loan interest thereon from the principal of Trust Estate *A* as it exists from time to time, and every sum so paid shall be deemed withdrawn from the principal of Trust Estate *A* by the Settlor, and the Trustee shall be credited accordingly, provided, however, that the Trustee shall not be responsible for payment of premiums and/or loan interest unless it shall have sufficient funds in its possession as above provided ten days prior to the expiration of the period of grace on the particular premium then payable and/or ten days prior to the date upon which such loan interest is payable as the case may be. The Trustee shall not be required to pay any premium and/or loan interest except from other funds made available to it by the Settlor or from the principal of Trust Estate *A*, and shall not take any action to require the Settlor to make funds available with which to pay premiums and/or loan interest. The Settlor shall not by depositing any such policy be held to assume any obligation to pay any premium and/or loan interest thereon himself, or to furnish funds for the payment thereof by the establishment of Trust Estate *A* or otherwise. The Trustee may, but shall not be under any obligation to, pay premiums on any policy, or interest on any loan thereon, not lodged with it and the Settlor may at any time cease to pay the premiums and/or loan interest on any such policy."

Revocable Power of Attorney addressed to the Trustee:

"Referring to trust agreement dated the _____ day of _____, 193 _____, made by and between _____, as Settlor, and the _____ Bank, as Trustee, under which the Settlor is the life beneficiary with respect to Trust Estate *A* therein created, I, _____, the said Settlor and life beneficiary, hereby authorize you, until notice of revocation is served upon you as hereinafter provided, as my attorney, to apply the income of Trust Estate *A*, as it is received from

The fully funded insurance trust above discussed is the form which will be most commonly used. However, a variation of this type of agreement has been developed. A case may arise where the settlor does not have available sufficient property to fund the trust completely, but he does have enough to partially fund it and feels that he may add to the trust from time to time sufficient cash and securities to completely fund it eventually. This type of agreement may be referred to as a Semi-Funded Insurance Trust. The agreement required for this situation may differ in one particular and usually only in two particulars from the fully funded form. At the beginning of the agreement a recital should be included setting forth the intention of the settlor with respect to additions of property. Reference to the form of article relative to premium payments suggested at the end of the preceding paragraph shows that premium payments are to be made "either from other funds made available to it (the Trustee) for that purpose by the Settlor, or from the principal of Trust Estate A". Under this wording there is included not only income from the trust which the settlor may authorize the trustee to use under the power of attorney but also other funds which the settlor may pay directly to the trustee for premium payments. In fact, a periodical deposit of cash may frequently be required. The burden of administrative routine is greatly increased for the trustee under this form of agreement, and, hence, the trustee should see that a provision for adequate compensation is included. While from the point of view of the settlor this type of agreement is satisfactory, from the point of view of the trustee, it is an expensive trust to operate, a point which should be borne in mind by a trustee accepting such a trust.

IV

THE PERSONAL FUNDED LIFE INSURANCE TRUST

When the Settlor Does Not Desire to Retain Full Control Over the Policies During His Life

Under this form of agreement, the settlor not only transfers property to the trustee but also assigns the insurance policies, transferring all rights

time to time, to the payment of the premiums on any policy of life insurance insuring my life made payable to you as Trustee, and/or interest on any loan thereon, while such policy is lodged with you, provided however, that you shall not be required to apply any such income to payment of premiums and/or interest unless such income is in your hands 10 days prior to the expiration of the period of grace covering the particular premium payment then payable and/or the date upon which said loan interest is payable. All of such disbursements of income in payment of premiums of such life insurance policies and/or all interest on loans thereon shall be considered as payments to me and you shall be credited accordingly. All income not required for payments of premiums and/or interest as above directed shall be paid to me according to the provisions of the aforementioned trust agreement. I reserve the right at any time or from time to time to revoke the provisions of this authorization in whole or in part, by filing with you a written notice of such revocation."

to the trustee and directing the trustee to pay insurance premiums. As title to property and to the insurance policies passes to the trustee, it is clear a trust is created. As in the case of the unfunded trust, the settlor might reserve a right of revocation and a right to direct the trustee in the exercise of various rights under the policies, but as was pointed out in the discussion on the unfunded agreement, the assignment method is not proper in such case as the settlor in that event desires to retain actual control of the policies. If such is the intention of the settlor, the form of funded agreement previously discussed should be used. A funded trust where the policies are assigned to the trustee may be made irrevocable, however, and there are times when such procedure may be proper. This type of agreement is probably of the most use in the case of marriage, separation or divorce settlements, and, prior to the passage of the Gift Tax Act of 1932,³⁹ it was not infrequently used for the purpose of minimizing estate and inheritance taxes. It would appear that the Gift Tax Act nullifies to a great extent any advantage gained from the use of this method of minimizing taxes since a tax would be payable (subject to certain exemptions) on the value of property transferred to the trustee including the then cash or surrender value of the insurance policies assigned.

In considering the advisability of using this form of agreement, attention must be given to the laws of the particular jurisdiction with regard to accumulations. In a jurisdiction having no laws against accumulations, this form of agreement may be used if it otherwise seems advisable. However, in jurisdictions having laws against accumulations, in the absence of a special relieving statute such as is found in New York,⁴⁰ it would seem inadvisable to use this form of agreement until it had been definitely determined whether the payment of premiums by the trustee would constitute an invalid accumulation under the particular law which applies.

If having been determined that this form of agreement may be properly used, the agreement may be drafted in the form of the ordinary voluntary trust agreement with the addition of special provisions as to payment of premiums and collection of insurance proceeds. The provision with regard to payment of premiums will provide that the trustee shall pay premiums from the income of the trust fund and should specifically cover the contingency that such income might be insufficient. Such contingency might be covered by authorizing the trustee to pay premiums from other funds made available to it for that purpose, and/or from the principal of the trust, or the trustee may be directed to obtain loans on the policies or to surrender them, according to the desire of the settlor. The covenant of the trustee to pay insurance premiums should be limited by specific proviso to the effect that the trustee

³⁹ REVENUE ACT OF 1932, 47 STAT. 245 *et seq.* (1932), 26 U. S. C. A. Supp. V § 1136a *et seq.* (1932).

⁴⁰ *Supra* note 37.

shall not be required to pay any premium except from income or from other funds as set forth above.⁴¹

The provision with respect to the collection of the proceeds of insurance policies will resemble the provision formerly considered in connection with the Unfunded Trust Agreement discussed in the first subdivision except in one particular. This provision as there discussed limits the trustee to the collection of proceeds of policies maturing at or after the settlor's death. In the present case the trustee should collect any amounts payable on the policies whether maturing before or after the death of the settlor.

Under this form of agreement there would appear to be no serious objection to additions of insurance policies and other property by third parties if the settlor wishes to permit it, provided, of course, that the third parties assign to the trustee property, the income from which will be sufficient to pay premiums on the additional policies. However, because of the limited use for this form of agreement, such a provision is rare and it is perhaps better so, as the inclusion of such a provision will tend to complicate the situation.

There is a variation in this form of agreement which should be noted. It sometimes is referred to as the "Cancellation" or "Drop Off" Funded Insurance Trust. In these cases a Funded Insurance Trust is established with income from the property being more than sufficient to meet premium payments with the provision that surplus income shall be invested and when the principal of the trust during the settlor's life shall exceed a certain amount by \$1000 or multiples thereof, insurance policies having a corresponding face amount shall be surrendered and the surrender value thereof added to the trust. This form of agreement is not recommended for use except in most exceptional circumstances. The cancellation of insurance policies may appeal to a settlor at the time the agreement is established but experience has shown that almost invariably when funds have accumulated and the trustee notifies the settlor that it is about to obtain a cancellation, the settlor will prefer to take over the policy from the trustee. Further, it is obvious that this type of agreement will be most unpopular with insurance underwriters. It is clear,

⁴¹ The following is suggested as an example of the type of provision discussed:

"The Trustee shall pay premiums on insurance policies held by it hereunder from income of the trust estate, or if the income is insufficient from other funds made available to it for that purpose by the Settlor (or by any beneficiary or beneficiaries) or from the principal of the trust estate and to the extent that the income and other funds made available for this purpose are insufficient, but to that extent only, the Trustee is authorized and directed to pay premiums from the principal of the trust estate as it exists from time to time and every sum so paid shall be deemed withdrawn from the principal of the trust estate by the Settlor (or by the beneficiary or beneficiaries) and the Trustee shall be credited accordingly, provided however, that the Trustee shall not be responsible for payment of premiums unless it shall have sufficient funds in its possession as above provided, 10 days (or other convenient period) prior to the expiration of the period of grace on the particular premium then payable. The Trustee shall not be required to pay any premium except from income, from other funds made available to it for that purpose or from the principal of the trust estate and shall not take any action to require the Settlor (or the beneficiary or beneficiaries) to make funds available with which to pay premiums."

therefore, that an agreement of this type, if used at all, should have an additional provision with respect to the surrender of the policies, giving the settlor the option of taking over the policy selected by the trustee for surrender by payment to the trustee of the then surrender value thereof.

V

QUESTIONS RELATING TO ALL PERSONAL LIFE INSURANCE TRUST AGREEMENTS

Cash for payment of taxes, fees and other expenses is required in the administration of any estate. In recent years various individuals have made use of insurance for the purpose of providing their estates with cash upon their death, the estate being named beneficiary under the policy. This method provides the estate with cash and may prevent forced liquidation and consequent loss, but, as the policies are payable to the estate, the full amount will be subject to the federal estate tax. It would seem, however, that insurance policies payable to a trustee for third parties may be considered as being payable to a beneficiary other than the estate of the insured,⁴² and, hence, in the case of revocable agreements, insurance proceeds will be exempt up to \$40,000 and, in the case of irrevocable agreements, would appear to be entirely free from any estate or inheritance tax assessed against the settlor.⁴³ By the inclusion of a proper provision in the trust agreement authorizing the trustee to purchase property from the settlor's estate. The advantage with respect to taxes will be retained while cash may also be obtained by the estate. The inclusion of such a provision in the trust agreement frequently prevents loss to the estate from forced liquidation and in some cases may permit the

⁴² *Matter of Haedrick*, 134 Misc. 741, 236 N. Y. Supp. 395 (1929); *aff'd*, 256 N. Y. 608 (1931). In this case it appeared that the settlor established a revocable funded insurance trust, with surplus income payable to the settlor, and, after his death, one-half of the income to his wife for life and one-quarter to each of his two daughters, with remainders over. The agreement was later modified changing the shares in manner of distribution but naming the same beneficiaries. The amount of insurance involved was \$74,500. Following the death of the settlor, the New York tax appraiser did not include the insurance proceeds as part of the decedent's estate for purposes of the New York transfer tax, claiming that under statutes of said state proceeds of insurance policies payable to parties other than the estate of the deceased were exempt from the tax. It was conceded that the other property held under the trust was taxable. The State Tax Commission appealed from the decision of the appraiser as to the insurance proceeds. The Surrogate Court affirmed the decision of the appraiser and the decision of the Surrogate Court was upheld by the Appellate Division and Court of Appeals, it being conceded on argument that proceeds of insurance policies payable to a named beneficiary other than the decedent's estate were not taxable. The only question was whether the status of non-taxability of proceeds was altered by reason of the fact that the designated payee took as trustee and not in its own right. For change in N. Y. Tax Laws, see N. Y. Laws (1930) c. 710, effective Sept. 1, 1930; N. Y. Consolidated Laws, c. 60, Art. 10-c, § 249m *et seq.*

⁴³ For a discussion of the question of taxes in relation to Insurance Trusts see Hanna, *supra* note 3, at 373-386. Remarks there made should be considered in connection with the Revenue Act of 1932, 47 STAT. 173, 26 U. S. C. A. SUPP. V (1932) § 3001 *et seq.*, particularly Title III of said act, being the Gift Tax Act. Under this act, it would appear that in the case of an irrevocable insurance trust, a gift tax would be collectible (subject to certain exemptions) on all property transferred to the trustee, including the then cash or surrender value of the insurance policies assigned. This comment should be considered in connection with the Regulations of the Treasury Department, when issued.

estate, through sale of certain assets to the trustee, to be closed out much sooner than might otherwise be the case. In some cases the burden of determining whether such purchase shall be made is placed upon the trustee; in other cases it is placed upon the executor of the estate. It would seem that, in the usual case, the executor is the proper party to determine whether such sale shall be made.

Such a provision should in most cases limit the obligation to purchase to a period of one or two years following the death of the settlor in order to avoid undue delay in the investment of insurance proceeds. Also in the case of a corporate trustee it usually is felt advisable to limit any purchase of real property to real property situated in the jurisdiction in which the corporate trustee is domiciled. It may be provided that any dispute on market value may be settled by arbitration. The trustee should insist that provisions be inserted relieving it from liability for any loss resulting by reason of such purchase or by reason of any act done or admission made by the trustee in good faith in determining or attempting to agree upon the market value of the property submitted for purchase. Such property should be directed to be held as part of the trust estate and power of sale or lease should be given. Further, the trustee should require the inclusion of a provision to the effect that no such purchase shall be required except during the pendency of one or more of the trusts created and from the principal of the fund or funds so held in trust.⁴⁴ It is felt that this type of provision is one of the

⁴⁴ There is set forth below an example of a provision of this type:

"The Trustee shall with proceeds received from insurance policies purchase at the market value thereof at the time of the purchase any real property situated in the State of . . . , or personal property wherever situated owned by the Settlor at the time of his death tendered to it by the Executor or Administrator of the Settlor at any time or from time to time within a period of one year after the death of the Settlor, whether or not such property shall be of the kind in which a Trustee is by the laws of the State of . . . permitted to invest, provided it shall receive good title thereto from the Executor or Administrator of the Settlor. If there shall be any doubt or difference of opinion as to what is the market value of such property, or if there shall be any difficulty in determining such value, it shall be agreed upon by the Trustee and the Executor or Administrator of the Settlor and their determination as to such value shall be conclusively binding upon all persons claiming under this instrument. If they shall be unable to agree, such value shall be determined by an arbitrator to be agreed upon and appointed by them and in such case his determination shall be conclusive. The expense of such arbitration shall be borne equally as an expense of administration by the Executor or Administrator and the Trustee. In no event shall the Trustee be liable to anyone claiming under this instrument for any loss resulting to the trust estate or any portion thereof by reason of such purchase or by reason of any act done or admission made by the Trustee in good faith in determining or attempting to agree upon the market value of the property purchased as herein directed. The Trustee may hold as part of the trust estate any property so acquired and may sell the same at any time in such manner and upon such terms and conditions as it in its sole discretion may deem advisable and may without assuming any individual responsibility mortgage any real property acquired pursuant to the foregoing provisions or lease the same for terms of such length as it may deem advisable or exchange it for other real property in its discretion, and any such lease shall be valid and effective and binding upon the remaindermen for the entire term thereof, including such part thereof as may extend beyond the termination of any or all trusts created hereby. The provisions of this article shall not be considered to require any such purchase except during the pendency of one or more of the trusts created hereby and from the principal of the fund or funds so held in trust. The said provisions shall not apply to property subject to immediate distribution."

most valuable provisions which can be included in the agreement. This type of provision may be properly included in any of the Personal Insurance Trust Agreements, but it should be observed that the use of the provision is subject to one restriction. It should not be used where the beneficiaries under the will of the settlor and the beneficiaries under the trust agreement are not the same parties, nor where the plan of distribution is not substantially the same in each case.

It is often suggested that the right to loan money to the estate as well as the right to purchase from the estate should be given to the trustee. This is of course a convenient provision, but it is subject to the objection that its inclusion in the trust agreement may give the creditors of the deceased's estate some right to claim against the trust estate through the right of the executor to obtain loans. Since by virtue of statutes in many jurisdictions proceeds of insurance policies are exempt in whole or in part from claims of creditors of the deceased whose life was insured when the policy is payable to a beneficiary other than the deceased's estate, and since such statutes are supported by strong public policy, it is usually thought advisable to omit reference to loans, thus avoiding any danger of such provisions being considered as a waiver of the statutory exemption.

Another general provision which may be found to be most useful in cases where a corporate fiduciary is used, has to do with mergers and consolidation in which the corporate trustee may be involved. When a merger or consolidation takes place, there will always be the question whether the new institution succeeds to the rights, powers and duties of the original corporate fiduciary. Some states have specific statutes with respect to mergers and consolidations involving a fiduciary.⁴⁵ However, where there is no legislation in point, or where such legislation was passed after the execution of the trust agreement, the question of succession becomes very serious. The best and also the simplest method for overcoming this difficulty is to include in the original agreement an article to the effect that in case of merger or consolidation of the appointed trustee with another corporate fiduciary, the new institution shall become trustee with the same powers, rights and duties as the trustee originally named. In drafting a provision of this type it is well to bear in mind that any one of at least five situations may arise. Two state institutions may be consolidated, or one may be merged with another, a state institution may be changed into a national bank, or it may be merged with a national bank, or two national banks may consolidate.⁴⁶ It would seem advisable to make the provision inclusive.

However, while such a provision will cover the matter of succession to fiduciary powers and duties under the trust agreement, there is one further

⁴⁵ California, Illinois, Kentucky, Michigan, New Jersey, New York, North Carolina and Pennsylvania.

⁴⁶ See Bogert, *Trusts—Some Recent Developments* (1929) 23 ILL. L. REV. 749.

point which should be given consideration in this connection in the case of insurance trusts. When change of beneficiary is made on a policy, a definite corporate fiduciary will be designated to receive the proceeds and the policy will usually provide that if the named beneficiary is not in existence at the death of the insured, the proceeds of the policy when payable will be paid over to his estate. In case of a merger between two institutions, one of them ceases to exist; in the case of consolidation, both institutions cease to exist and a new institution takes their place. It is a question here whether the succeeding institution may claim the proceeds. The general practice of insurance companies, at least with large well-known institutions, appears to be to allow the succeeding institution to collect the proceeds as beneficiary following the death of the settlor upon presentation of the usual documents accompanied by proper credentials with regard to the validity of the merger or consolidation. It should be noted that this procedure places upon the insurance company the burden of determining whether the succeeding institution is the beneficiary entitled to the proceeds. It is possible to imagine a case where the insurance company might not be able or might be unwilling to determine whether the succession was proper. In such a case the insurance company would probably pay the proceeds into court and ask for a determination of the proper payee. This procedure would cause delay and might result in payment to the estate of the settlor and not to the trustee. If, on consideration, it is felt that, even with the article as to succession included, there is any danger in this respect, following such merger or consolidation the right to change the beneficiary may be exercised and the succeeding institution definitely named as the designated beneficiary on the policy. All possible questions as to succession will thus be eliminated.

(Editor's Note: Part II, concluding this article, will appear in the February issue.)